

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6062

PETITION OF STEPHEN J. MCGARRY
(Hearings held April 13 and May 25, 2005)

OPINION OF THE BOARD
(Effective date of Opinion, July 8, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.326(a)(1). The petitioner proposes the construction of an accessory structure/garage in the front yard. Section 59-C-1.326 requires accessory structures to be located in the rear yard only.

The subject property is Part of Lots 3, 4, 5, 6, 17 and 18, Block 54, located at 8112 Flower Avenue, Takoma Park, Maryland, 20912, in the **R-40 Zone** (Tax Account No. 01062838).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 23 x 36 foot two-story detached garage.
2. The petitioner testified that the lot was platted in 1922 and that the house, an original farmhouse, was built before the lot was platted. The petitioner testified that the property fronts on two streets, Roanoke and Flower Avenues. The petitioner testified that the house is 145 feet from Roanoke Avenue and 212 feet from Flower Avenue, with the house facing Flower Avenue.
3. The petitioner testified that the property is made up of parts of six lots, resulting in a uniquely shaped lot. The petitioner testified that the garage would be located in the southern section of the lot, at the rear of the house. The petitioner testified that the property has an existing garage that is located very close to the property's northern boundary and is a converted former chicken coop, too small to adequately serve

as a garage. See, Exhibit Nos. 4, 7(a) and 7(b) [site plan and photographs].

4. The petitioner testified that the property has a curb-cut from Roanoke Avenue and that the driveway in that area is about 20 feet wide. The petitioner testified that if a garage were to be located on the property that did not require a variance, the structure would need a driveway that would be approximately 300 feet long. The petitioner testified that the proposed garage would be located a great distance from the boundaries of the property and would not be easily visible to the neighboring properties. See, Exhibit No. 16 [highlighted zoning vicinity map].
5. In response to a request from the Board, a memorandum dated April 30, 2005, was received from the Susan Scala-Demby, Department of Permitting Services (DPS). Ms. Scala-Demby's memorandum states: "The property located 8112 Flower Avenue, Takoma Park, Maryland is a through lot. The zoning ordinance defines a through lot as such:

Lot, through: An interior lot, fronting on 2 parallel or approximately parallel streets.

59-C-1.326. Yard Requirements for an Accessory Building or Structure (in Feet).

(a) For all lots.

(1) An accessory building or structure must be located in a rear yard and must not occupy more than 25 percent of the rear yard.

The Department of Permitting Service has always viewed these lots as having two fronts and two sides since a rear yard is that which covers the full width of the lot . . .

* * * * *

Consequently, the Department of Permitting Services cannot approve an accessory structure on a through lot."

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict

application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The property is a uniquely shaped, irregular lot that has access from two streets, Roanoke and Flower Avenues. DPS has determined that the petitioner's lot has two fronts and two sides, but does not have a rear yard. DPS has designated the lot as a through lot and determined that the Department "cannot approve an accessory structure on a through lot."

Since the subject lot has no yard, as determined by DPS, within which an accessory structure would be permitted, the Board finds that these are exceptional circumstances peculiar to the petitioner's property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owner.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the variance request for the construction of an accessory structure/detached garage is the minimum reasonably necessary.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the proposed garage will not materially impact the view from the neighboring homes and that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance for the construction of an accessory structure/detached garage in the front yard is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(h).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Angelo M. Caputo, Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 8th day of July, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.